

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 META COMPANY, a Delaware corporation,
12 Plaintiff,
13 v.
14 ZHANGYI ZHONG, an individual,
15 DREAMWORLD USA INC., et. al.
Defendants.

Case No. 3:17-cv-03259-EMC

**STIPULATED PROTECTIVE ORDER
FOR LITIGATION INVOLVING
PATENTS, HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS**

1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
21 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
22 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
23 all disclosures or responses to discovery and that the protection it affords from public disclosure
24 and use extends only to the limited information or items that are entitled to confidential treatment
25 under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4,
26 below, that this Stipulated Protective Order does not entitle them to file confidential information
27 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
28 that will be applied when a party seeks permission from the court to file material under seal.

1 2. **DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
6 of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
8 well as their support staff).

9 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.¹

11 2.5 Designating Party: a Party or Non-Party that designates information or items that it
12 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
14 CODE”.

15 2.6 Disclosure or Discovery Material: all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
21 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
22 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
23 of a Party’s competitor.

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26 ¹ The Parties do not agree that the Designated House Counsel provisions of this Protective Order, including
27 with respect to review of “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” documents by
Designated House Counsel, are appropriate for this matter. Before any such provisions may be used by
either party, the parties must meet and confer and, if necessary, seek a ruling from the Court.

1 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
2 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
3 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
4 less restrictive means.

5 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
6 sensitive “Confidential Information or Items” representing computer code and associated
7 comments and revision histories, formulas, engineering specifications, or schematics that define or
8 otherwise describe in detail the algorithms or structure of software or firmware designs, disclosure
9 of which to another Party or Non-Party would create a substantial risk of serious harm that could
10 not be avoided by less restrictive means.

11 2.10 House Counsel: attorneys who are employees of a party to this action. House
12 Counsel does not include Outside Counsel of Record or any other outside counsel.

13 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
14 entity not named as a Party to this action.

15 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this
16 action but are retained to represent or advise a party to this action and have appeared in this action
17 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

18 2.13 Party: any party to this action, including all of its officers, directors, employees,
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this action.

22 2.15 Professional Vendors: persons or entities that provide litigation support services
23 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
24 organizing, storing, or retrieving data in any form or medium) and their employees and
25 subcontractors.

26 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
28 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

1 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 **3. SCOPE**

4 The protections conferred by this Stipulation and Order cover not only Protected Material
5 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
6 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a
10 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
11 result of publication not involving a violation of this Order, including becoming part of the public
12 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
13 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
14 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
15 use of Protected Material at trial shall be governed by a separate agreement or order.

16 **4. DURATION**

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
20 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
21 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
22 including the time limits for filing any motions or applications for extension of time pursuant to
23 applicable law.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or Non-Party that designates information or items for protection under this Order must take care to
27 limit any such designation to specific material that qualifies under the appropriate standards. To
28 the extent it is practical to do so, the Designating Party must designate for protection only those

1 parts of material, documents, items, or oral or written communications that qualify – so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
5 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
6 unnecessarily encumber or retard the case development process or to impose unnecessary
7 expenses and burdens on other parties) expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it designated
9 for protection do not qualify for protection at all or do not qualify for the level of protection
10 initially asserted, that Designating Party must promptly notify all other parties that it is
11 withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
13 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
14 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
19 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
20 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected
21 material. If only a portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
23 markings in the margins) and must specify, for each portion, the level of protection being asserted.

24 A Party or Non-Party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which material
26 it would like copied and produced. During the inspection and before the designation, all of the
27 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants

1 copied and produced, the Producing Party must determine which documents, or portions thereof,
2 qualify for protection under this Order. Then, before producing the specified documents, the
3 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
5 CODE) to each page that contains Protected Material. If only a portion or portions of the material
6 on a page qualifies for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
8 portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
10 the Designating Party identify on the record, before the close of the deposition, hearing, or other
11 proceeding, all protected testimony and specify the level of protection being asserted. When it is
12 impractical to identify separately each portion of testimony that is entitled to protection and it
13 appears that substantial portions of the testimony may qualify for protection, the Designating Party
14 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
15 to have up to 21 days to identify the specific portions of the testimony as to which protection is
16 sought and to specify the level of protection being asserted. Only those portions of the testimony
17 that are appropriately designated for protection within the 21 days shall be covered by the
18 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
19 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
20 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.”

22 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
23 other proceeding to include Protected Material so that the other parties can ensure that only
24 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
26 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
27 – ATTORNEYS’ EYES ONLY.”

1 Transcripts containing Protected Material shall have an obvious legend on the title page
2 that the transcript contains Protected Material, and the title page shall be followed by a list of all
3 pages (including line numbers as appropriate) that have been designated as Protected Material and
4 the level of protection being asserted by the Designating Party. The Designating Party shall inform
5 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
6 21-day period for designation shall be treated during that period as if it had been designated
7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise
8 agreed. After the expiration of that period, the transcript shall be treated only as actually
9 designated.

10 (c) for information produced in some form other than documentary and for any
11 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
12 container or containers in which the information or item is stored the legend "CONFIDENTIAL"
13 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY
14 CONFIDENTIAL – SOURCE CODE". If only a portion or portions of the information or item
15 warrant protection, the Producing Party, to the extent practicable, shall identify the protected
16 portion(s) and specify the level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
18 designate qualified information or items does not, standing alone, waive the Designating Party's
19 right to secure protection under this Order for such material. Upon timely correction of a
20 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
21 in accordance with the provisions of this Order.

22 | P a g e | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
24 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
28 original designation is disclosed.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process by providing written notice of each designation it is challenging and describing the basis
3 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
4 notice must recite that the challenge to confidentiality is being made in accordance with this
5 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
6 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of notice. In
8 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
9 designation was not proper and must give the Designating Party an opportunity to review the
10 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
11 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
12 the challenge process only if it has engaged in this meet and confer process first or establishes that
13 the Designating Party is unwilling to participate in the meet and confer process in a timely
14 manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
17 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
18 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
19 process will not resolve their dispute, whichever is earlier. Each such motion must be
20 accompanied by a competent declaration affirming that the movant has complied with the meet
21 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
22 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
23 shall automatically waive the confidentiality designation for each challenged designation. In
24 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
25 time if there is good cause for doing so, including a challenge to the designation of a deposition
26 transcript or any portions thereof. Any motion brought pursuant to this provision must be
27 accompanied by a competent declaration affirming that the movant has complied with the meet
28 and confer requirements imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
4 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
5 file a motion to retain confidentiality as described above, all parties shall continue to afford the
6 material in question the level of protection to which it is entitled under the Producing Party's
7 designation until the court rules on the challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
10 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order. When the litigation has
13 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in
16 a secure manner² that ensures that access is limited to the persons authorized under this Order.

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
18 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
19 information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
22 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
23 Bound” that is attached hereto as Exhibit A;

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27 ² It may be appropriate under certain circumstances to require the Receiving Party to store any electronic
28 Protected Material in password-protected form.

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is
12 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
15 separately bound by the court reporter and may not be disclosed to anyone except as permitted
16 under this Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a custodian
18 or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

20 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
25 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
26 Bound" that is attached hereto as Exhibit A;

27 (b) Subject to the limitations set forth in footnote 1, Designated House Counsel of
28 the Receiving Party (1) who has no involvement in competitive decision-making, (2) to whom

1 disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment
2 and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in
3 paragraph 7.4(a)(1), below, have been followed];

4 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
5 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
6 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
7 followed];

8 || (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants, and
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
11 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

12 (f) the author or recipient of a document containing the information or a custodian
13 or other person who otherwise possessed or knew the information.

14 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
16 Counsel or Experts.

17 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
18 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
19 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
21 sets forth the full name of the Designated House Counsel and the city and state of his or her
22 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
23 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
24 involved, or may become involved, in any competitive decision-making.³

26 ³ It may be appropriate in certain circumstances to require any Designated House Counsel who receives
27 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information pursuant to this Order to
28 disclose any relevant changes in job duties or responsibilities prior to final disposition of the litigation to
 allow the Designating Party to evaluate any later-arising competitive decision-making responsibilities.

15 (b) A Party that makes a request and provides the information specified in the
16 preceding respective paragraphs may disclose the subject Protected Material to the identified
17 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
18 receives a written objection from the Designating Party. Any such objection must set forth in
19 detail the grounds on which it is based.

20 (c) A Party that receives a timely written objection must meet and confer with the
21 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
22 agreement within seven days of the written objection. If no agreement is reached, the Party

24 ⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then
25 the Expert should provide whatever information the Expert believes can be disclosed without violating any
26 confidence agreements, and the Party seeking to disclose to the Expert shall be available to meet and
confer with the Designating Party regarding any such engagement.

⁵ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party’s “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information.

1 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
2 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
3 seeking permission from the court to do so. Any such motion must describe the circumstances
4 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
5 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
6 suggest any additional means that could be used to reduce that risk. In addition, any such motion
7 must be accompanied by a competent declaration describing the parties' efforts to resolve the
8 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
9 setting forth the reasons advanced by the Designating Party for its refusal to approve the
10 disclosure.

11 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
12 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
13 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
14 Material to its Designated House Counsel or Expert.

15 **8. PROSECUTION BAR**

16 Absent written consent from the Producing Party, any individual who receives access to
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
18 SOURCE CODE" information shall not be involved in the prosecution of patents or patent
19 applications relating to augmented reality technology, including without limitation the patents
20 asserted in this action and any patent or application claiming priority to or otherwise related to the
21 patents asserted in this action, before any foreign or domestic agency, including the United States
22 Patent and Trademark Office ("the Patent Office").⁶ For purposes of this paragraph, "prosecution"
23 includes directly or indirectly drafting, amending, advising, or otherwise affecting the scope or
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27 ⁶ It may be appropriate under certain circumstances to require Outside and House Counsel who receive
28 access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information to implement an
"Ethical Wall."

1 maintenance of patent claims.⁷ To avoid any doubt, “prosecution” as used in this paragraph does
2 not include representing a party challenging a patent before a domestic or foreign agency
3 (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter partes*
4 reexamination). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information
6 is first received by the affected individual and shall end two (2) years after final termination of this
7 action.

8 **9. SOURCE CODE**

9 (a) To the extent production of source code becomes necessary in this case, a
10 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
11 if it comprises or includes confidential, proprietary or trade secret source code.

12 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
13 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” information including the Prosecution Bar set forth in Paragraph
15 8, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and
17 7.4, with the exception of Designated House Counsel..

18 (c) Any computer source code⁸ produced in discovery shall be made available
19 for inspection, in a format allowing it to be reasonably reviewed and searched, during normal
20 business hours or at other mutually agreeable times, at an office of the Producing Party’s counsel
21 or another mutually agreed upon location. The computer source code shall be made available for
22 inspection on a secured computer in a secured room without Internet access or network access to

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24 ⁷ Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.

25 ⁸ For purposes of this subparagraph, computer source code is limited to source code as defined in the IEEE
26 Standard Glossary of Software Engineering Terminology (1990) as “computer instructions and data
27 definitions expressed in a form suitable for input to an assembler, compiler, or other translator.” It does
28 not include other materials such as formulas, engineering specifications, or schematics that define or
otherwise describe in detail the algorithms or structure of software or firmware designs that may be
designated as “Highly Confidential – Source Code.”

1 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion
2 of the source code onto any recordable media or recordable device. The Producing Party may
3 visually monitor the activities of the Receiving Party's representatives during any source code
4 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the
5 source code.⁹

6 (d) The Receiving Party may request paper copies of limited portions of source
7 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
8 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
9 reviewing the source code other than electronically as set forth in paragraph (c) in the first
10 instance. The Producing Party shall provide all such source code in paper form including bates
11 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party
12 may challenge the amount of source code requested in hard copy form pursuant to the dispute
13 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
14 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute
15 resolution.

16 (e) The Receiving Party shall maintain a record of any individual who has
17 inspected any portion of the source code in electronic or paper form. The Receiving Party shall
18 maintain all paper copies of any printed portions of the source code in a secured, locked area. The
19 Receiving Party shall not create any electronic or other images of the paper copies and shall not
20 convert any of the information contained in the paper copies into any electronic format. The
21 Receiving Party shall only make additional paper copies if such additional copies are (1) necessary
22 to prepare court filings, pleadings, or other papers (including a testifying expert's expert report),
23 (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
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27 ⁹ It may be appropriate under certain circumstances to require the Receiving Party to keep a paper log
28 indicating the names of any individuals inspecting the source code and dates and times of inspection, and
the names of any individuals to whom paper copies of portions of source code are provided.

1 copies used during a deposition shall be retrieved by the Producing Party at the end of each day
2 and must not be given to or left with a court reporter or any other unauthorized individual.¹⁰

3 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
4 **OTHER LITIGATION**

5 If a Party is served with a subpoena or a court order issued in other litigation that
6 compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
8 SOURCE CODE” that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall include
10 a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to issue
12 in the other litigation that some or all of the material covered by the subpoena or order is subject to
13 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
14 and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
16 Designating Party whose Protected Material may be affected.¹¹

17 If the Designating Party timely seeks a protective order, the Party served with the
18 subpoena or court order shall not produce any information designated in this action as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which
21 the subpoena or order issued, unless the Party has obtained the Designating Party’s permission.
22 The Designating Party shall bear the burden and expense of seeking protection in that court of its
23

24 ¹⁰ The nature of the source code at issue in a particular case may warrant additional protections or
25 restrictions. For example, it may be appropriate under certain circumstances to require the Receiving Party
26 to provide notice to the Producing Party before including “HIGHLY CONFIDENTIAL – SOURCE
CODE” information in a court filing, pleading, or expert report.

27 ¹¹ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective
28 Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality
interests in the court from which the subpoena or order issued.

1 confidential material – and nothing in these provisions should be construed as authorizing or
2 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

3 **11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
4 **THIS LITIGATION**

5 (a) The terms of this Order are applicable to information produced by a Non-
6 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such
8 information produced by Non-Parties in connection with this litigation is protected by the
9 remedies and relief provided by this Order. Nothing in these provisions should be construed as
10 prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce
12 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement
13 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

14 1. promptly notify in writing the Requesting Party and the Non-Party that
15 some or all of the information requested is subject to a confidentiality agreement with a Non-
16 Party;

17 2. promptly provide the Non-Party with a copy of the Stipulated Protective
18 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
19 the information requested; and

20 3. make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving Party may
23 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-
24 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
25 possession or control that is subject to the confidentiality agreement with the Non-Party before a

1 determination by the court.¹² Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this court of its Protected Material.

3 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
5 Protected Material to any person or in any circumstance not authorized under this Stipulated
6 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
7 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
8 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
9 of all the terms of this Order, and (d) request such person or persons to execute the
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery order
17 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
18 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
19 communication or information covered by the attorney-client privilege or work product protection,
20 the parties may incorporate their agreement in the stipulated protective order submitted to the
21 court.

22 **14. MISCELLANEOUS**

23 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
24 seek its modification by the court in the future.

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26
27 ¹² The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a
28 Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

6 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
7 laws and regulations relating to the export of technical data contained in such Protected Material,
8 including the release of such technical data to foreign persons or nationals in the United States or
9 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
10 data, and the Receiving Party shall take measures necessary to ensure compliance.

11 14.4 Filing Protected Material. Without written permission from the Designating Party
12 or a court order secured after appropriate notice to all interested persons, a Party may not file in
13 the public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
16 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
17 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
18 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
19 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving
20 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
21 unless otherwise instructed by the court.

22 **15. FINAL DISPOSITION**

23 Within 60 days after the final disposition of this action, as defined in paragraph 4,
24 each Receiving Party must return all Protected Material to the Producing Party or destroy such
25 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
26 compilations, summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
28 submit a written certification to the Producing Party (and, if not the same person or entity, to the

1 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
2 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
3 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
5 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
6 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials contain Protected
8 Material. Any such archival copies that contain or constitute Protected Material remain subject to
9 this Protective Order as set forth in Section 4 (DURATION).

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11

12 Dated: July 7, 2017

/s/Rick Chang

LECLAIRRYAN

Attorneys for Defendants

13

14

15 Dated: July 7, 2017

/s/Jennifer G. Redmond

16 SHEPPARD MULLIN RICHTER & HAMPTON LLP

17 Attorneys for Plaintiff

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PURSUANT TO STIPULATION, IT IS SO ORDERED

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Dated: July 10, 2017

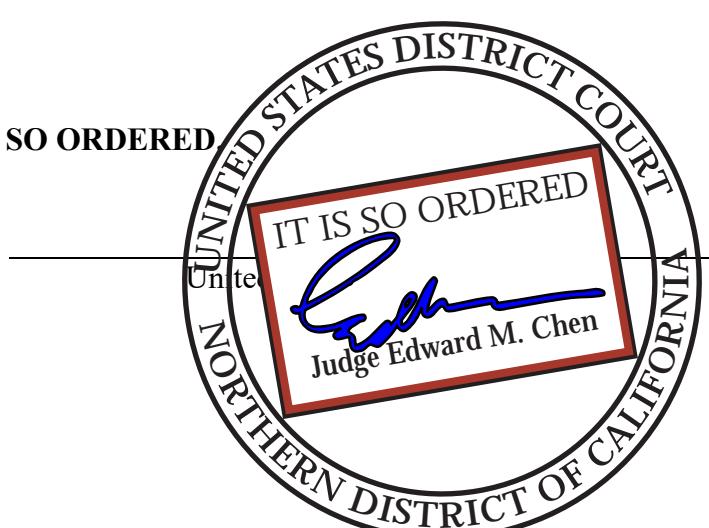


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Northern District of California for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 I hereby appoint _____ [print or type full name] of
17 _____ [print or type full address and telephone number]
18 as my California agent for service of process in connection with this action or any proceedings
19 related to enforcement of this Stipulated Protective Order.

21 || Date:

22 | City and State where sworn and signed:

24 Printed name:

25 [printed name]

26 | Signature:

27 | [signature]